

REMARKS

This Amendment is filed in response to the Office Action mailed April 18, 2008. The Applicant believes the application is in condition for allowance. To the extent any prior objections or rejections are still applicable they are respectfully traversed.

Claims 20-51 are pending in the case.

Claim 21, 23, 25 and 27 have been amended.

No new claims have been added.

Claim Rejections - 35 U.S.C. §112

At paragraphs 4-5 of the Office Action, claims 21-23 and 25-27 were rejected under 35 U.S.C. §112, second paragraph. The Applicant has rephrased claims 21, 23, 25 and 27 to make clear that “the executable program instructions”, introduced in the base independent claims, “further comprise program instructions for” performing the operations in these claims. The Applicant accordingly believes the claims are clear and requests the rejection under 35 U.S.C. §112, second paragraph be withdrawn.

Claim Rejections - 35 U.S.C. §103

At paragraphs 2-3 of the Office Action, claims 20-51 were rejected under 35 U.S.C. §103(a) as obvious over Gai et al., U.S. Patent No. 6,031,194 (hereinafter “Gai”).

The Applicant respectfully urges that **Gai is disqualified as prior art by operation of 35 U.S.C. §103(c)**. Gai and the subject matter of the present application were both owned by Cisco Technology, Inc. at the time that the present invention was made.

The statute 35 U.S.C. 103(c) states (emphasis added):

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, **shall not preclude patentability** under this section where the subject matter and claimed invention were, at the time the invention

was made, owned by the same person or subject to an obligation to the same person.

The subject matter of the present application was developed by inventors having an obligation to assign their rights to Cisco Technology, Inc. The present application was assigned to Cisco Technology, Inc. by an assignment in its parent, U.S patent 6,628,624, recorded at Reel/Frame 009757/0724 on Feb. 8, 1999. Such assignment covers all continuations and divisionals, and thus covers the present application.

Gai was previously assigned to Cisco Technology, Inc. by an assignment recorded at Reel/Frame 008987/0471 on Feb. 19, 1998.

35 U.S.C. §103(c) is satisfied since Gai does not qualify as §102(a), (b), (c) or (d) prior art.

35 U.S.C. §102(a) states a person is entitled to a patent unless “the invention... was patented or described in a printed publication... before the invention thereof by the applicant.” Gai does not qualify as prior art under §102(a) because the invention was invented by the Applicant before Gai published. The present application claims priority to U.S Patent 6,628,624, which was filed on Dec. 9, 1998. Gai did not publish before it issued, and did not issue until Feb. 29, 2000.

35 U.S.C. §102(b) states a person is entitled to a patent unless “the invention was patented or described in a printed publication ... more than one year prior to the date of the application for patent in the United States.” Gai does not qualify as prior art under §102(b) because the present application has a priority date that is before the date Gai issued/published.

35 U.S.C. §102(c) states a person is entitled to a patent unless “he has abandoned the invention.” The Applicant has not abandoned the present invention.

35 U.S.C. §102(d) states a person is entitled to a patent unless “the invention was first patented or caused to be patented ... in a foreign country prior to the date the application for patent in this country on an application for patent ... filed more than

twelve months before the filing of the application in the United States.” The present invention was not patented in a foreign country before filing in the United States.

Accordingly, the Applicant respectfully urges that Gai may only potentially qualify as prior art only under 35 U.S.C. §102(e), §102(f), or §102(g). Therefore, all the requirements of 35 U.S.C §103(c) are satisfied, and Gai is legally precluded from serving as a reference under 35 U.S.C. §103(a) by operation of 35 U.S.C §103(c).

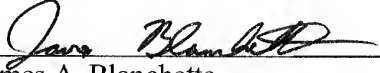
As Gai is the only basis for rejection under 35 U.S.C. §103(a), the Applicant respectfully requests issue of a Notice of Allowance.

Should the Examiner believe there are any remaining issues that may delay issue of a Notice of Allowance, the Applicant encourages the Examiner to contact the Applicant’s attorney at 617-951-2500 in hopes they may be addressed in an expedited manner, for example by Examiner Amendment..

In summary, all the independent claims are believed to be in condition for allowance and therefore all the dependent claims that depend there from are believed to be in condition for allowance. The Applicant respectfully solicits favorable action.

Please charge any additional fee occasioned by this paper to our Deposit Account No. 03-1237.

Respectfully submitted,


James A. Blanchette
Reg. No. 51,477
CESARI AND MCKENNA, LLP
88 Black Falcon Avenue
Boston, MA 02210-2414
(617) 951-2500